Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and John Lowber Welsh, receivers of the Philadelphia and Reading Railroad Company.

No. 830 169

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

8824

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OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, receivers of the Philadelphia and Reading Railroad Company. } No. —.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Comes now the Solicitor-General, on behalf of the United States, and prays for a writ of certiorari to the United States circuit court of appeals for the third circuit in the above-entitled cause.

The proceeding herein is an action of assumpsit which was brought in the United States district court for the eastern district of Pennsylvania on the 20th day of January, 1896, by the United States against the receivers of the Philadelphia and Reading Railroad Company to recover the penalty allowed by sections 4386, 4387, 4388, and 4389 of the Revised Statutes, in the case of "cattle,

sheep, swine, and other animals" being confined by railroad companies in cars, etc., "for a longer period than twenty-eight consecutive hours without unloading the same for rest, water, and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes."

The plaintiff proved at the trial of the case that the defendants, as receivers aforesaid, had, through their agents, on November 25 and 26, 1895, "knowingly and willingly" failed "to comply with the provisions" of sections 4386 and 4387 while transporting certain horses from Bethlehem, Pa., the said horses having been received by them at Bethlehem in course of a through shipment from Buffalo, N. Y.

The question whether the receivers of a railroad company were officially liable under the law was reserved by the court, and a verdict was rendered for the Government. A rule was then taken for judgment *non obstante veredicto*, and his honor, Judge Butler, before whom the case was tried, in an opinion (p. 7 of the record) made the rule absolute, and ordered a judgment to be entered for the defendants.

A writ of error was sued out from the United States circuit court of appeals for the third circuit to review this judgment, and, after an argument in the latter court, the judgment was affirmed. A brief opinion was filed, in which, after calling attention to the particular sections under which the suit was brought his honor, Judge Acheson, declared:

> The persons designated in section 4388 and made liable to the penalty are "any company, owner, or

> custodian of such animals." The district court held that this language does not embrace receivers, who are simply the court's officers appointed to execute its orders; that the Philadelphia and Reading Railroad was in the custody of the court and was controlled and managed by it through these officers; and that the statute being penal, it was not to be extended by construction so as to take in receivers. We can not doubt the soundness of these views, and, accordingly, we affirm the judgment of the district court.

It is respectfully submitted that, for the following reasons, this construction of the aforesaid sections was erroneous; that receivers of railroad companies may become officially liable to the penalty provided for in section 4388, the properties in their hands being properties of railroad companies which they, as officers of the court, must manage in conformity with the law.

(I) From the wording of the sections it is clear that Congress intended to enact a law applicable to all railroad companies alike, whether solvent or insolvent, whether in the hands of their officers or in the hands of receivers appointed by the court. There is no narrowing inference to be drawn from the language used. The terms "railroad company" or "companies" recur several times throughout the sections, and no qualifying words are anywhere added from which the conclusion might be drawn that the law was to apply only to companies whose properties were still in the hands of their officers and directors.

(II) Such being the clear intendment of the law, it is only by giving an undue effect to the rule of strict construction applicable to penal and semipenal statutes

that the scope of the statute can be so narrowed as to exclude corporations whose properties are being managed by receivers. The cases in which the rule as to penal statutes has been enforced do not, it is submitted, justify this narrow construction of the act.

(III) If it be argued that Congress did not actually have in mind corporations whose properties had passed into the hands of receivers as well as those whose properties were still in the hands of their officers and directors, the principles of the law of railroad receiverships would nevertheless require that receivers of railroad companies should obey the sections, inasmuch as Congress has referred to "railroad companies" without distinction. In assuming the rights of the common carrier, the receivers in the present case became officially subject—or, more strictly speaking, the *property in their hands* became subject—to the public and private liabilities of the carrier, both at common law and statutory. This being so, it would seem that the law of receiverships invites, rather than repels, what the Government conceives to be the true construction of the act.

(IV) The contrary construction, besides being entirely unwarranted by the wording of the sections, will establish a most unfortunate precedent. It will place, as it were, a premium on insolvency by allowing insolvent railroad companies to "cut" rates in cases of the transportation of live stock where other competing companies that have remained solvent are obliged to maintain a higher rate for the same transportation, to say nothing of the suffering of the animals transported, and the evil to the communities where they are delivered. Furthermore, the

decision in this case, if allowed to stand, will necessarily be regarded as a judicial authorization to receivers generally to disregard any police regulations which may be established by Congress for the management of railroad companies, whenever and wherever such regulations speak solely of "railroad companies" and fail to mention receivers *eo nomine*.

This is a class case. A number of prosecutions have been commenced by the Department of Justice against receivers of railroad companies for violations of sections 4386, 4387, 4388, and 4389 of the Revised Statutes, which are held in abeyance awaiting the final determination of this case.

It is respectfully submitted that the question involved is, for these reasons, one of great importance to the public, and that it deserves the examination and consideration of this court.

The Solicitor-General therefore respectfully prays the court to issue a writ of certiorari to the United States circuit court of appeals for the third circuit, requiring the said court to certify the record and proceedings in the case to this court, for its review and determination in accordance with the provisions of section 6 of the act of Congress approved March 3, 1891, the petitioner believing that manifest error has arisen, and that the United States will be greatly prejudiced in its rights unless said writ of certiorari is allowed.

JOHN K. RICHARDS,
Solicitor-General.

MISSING PAGE

UNITED STATES OF AMERICA, *ss.* 20

The President of the United States,

To Joseph H. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the Eastern District of Pennsylvania, wherein the United States of America is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable George M. Dallas, Judge of the Circuit Court of the United States, this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

GEO. M. DALLAS,
Circuit Judge.

JUNE 29, 1897.

14 IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

And afterwards to wit, on the twenty-third day of September, A. D. 1897, this cause being called for argument on the Transcript of record from the District Court of the United States for the Eastern District of Pennsylvania, before Hon. M. W. Acheson, and Hon. George M. Dallas, Circuit Judges and Andrew Kirkpatrick, District Judge, and being argued by counsel for the respective parties and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards to wit, on the fourteenth day of March A. D. 1898, comes the parties aforesaid, and the court now being fully advised in the premises renders the following opinion, to wit:

15 IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

THE UNITED STATES Plaintiff in Error
vs.
JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Before Acheson and Dallas, Circuit Judges, and Kirkpatrick, District Judge.

Acheson, Circuit Judge:

The question here is whether the Receivers of the Philadelphia and Reading Railroad Company, appointed by and acting under the orders of the Circuit Court of the United States for the Eastern District of Pennsylvania, are liable, under sections 4386–4389 of the Revised Statutes of the United States, to the penalty imposed by Section 4388 for keeping horses in cars more than twenty-eight consecutive hours without unloading. The persons designated in Section 4388, and made liable to the penalty, are "any company, owner or custodian of such animals". The District Court held that this language does not embrace receivers, who are simply the Court's officers appointed to execute its orders; that the Philadelphia and Reading Railroad was in the custody of the court, and was controlled and managed by it through these officers; and that the statute, being penal, was not to be extended by construction so as to take in receivers. We cannot doubt the soundness of these views, and, accordingly, we affirm the judgment of the District Court.

It is proper that we should here state that, shortly after the case was argued, this court (all the judges concurring) reached the conclusion above expressed; but, owing to a misunderstanding among the judges as to the assignment of the case, the announcement of the decision has been delayed.

The judgment of the District Court is Affirmed.

16 UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT TERM, 189

No.

UNITED STATES OF AMERICA, Plaintiff in Error,
vs.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District Court, in this cause, be, and the same is hereby affirmed.

GEO. M. DALLAS, *J.*

PHILADELPHIA, *March 21, 1898.*

17 UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD DISTRICT.

No. 10

September Term 1897.

UNITED STATES OF AMERICA, Plaintiff in Error,
vs.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

And now, to wit, this 23rd day of November A. D. 1898, it is ordered that Mandate issue to the said District Court of the United States for the Eastern District of Pennsylvania in accordance with the opinion and judgment of this Court in said cause.

GEO. M. DALLAS, *J.*

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America,

To the Honorable the Judges of the District Court of the United [SEAL] States for the Eastern District of Pennsylvania.

GREETING;

WHEREAS, lately in the District Court of the United States for the Eastern District of Pennsylvania, before you, or some of you, in a cause between the United States of America Plaintiff in Error, against Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company Defendants in Error; wherein the verdict of the jury and judgment of said court entered in said cause are in the following words, viz:

And thereupon, on the eighth day of December, A. D. 1896, a jury being called, come, to wit: Edward Lebo, James B. Wright, Daniel C. Brumbach, Isaac Richards, John T. Morris, Caleb C. Coburn, Wm. H. Dickson John Bossard, Robert A. Michael, Samuel Marshall, Theodore I. Heizmann Morgan H. Froth who being duly impanelled, returned, chosen, tried and sworn or affirmed to speak the truth in the issue joined in this cause between the United States of America, plaintiff, and

19 Joseph H. Harris Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, defendants, do say, that, upon the issue joined in this cause they find for the United States, plaintiff, and against Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, defendants, in the sum of two hundred dollars with costs.

The defendants, rule for judgment, notwithstanding the verdict is made absolute.

And thereupon it is considered and adjudged that the said plaintiffs, the United States of America, take nothing by their said writ, and that the said defendants, Joseph S. Harris Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, do go thereof without day as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of Writ of Error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

20 AND WHEREAS, in the present term of September, in the year of our Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court, that the judgment of the said District Court in this cause, be, and the same is hereby affirmed.

PHILADELPHIA, *March 21, 1898.*

21 You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said Writ of Error notwithstanding.

WITNESS, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 23rd day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

W. H. MERRICK,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

(Endorsed) U. S. Circuit Court of Appeals, Third Circuit. No. 10, Sept. Term, 1897. United States of America Plaintiff in Error vs. Joseph S. Harris, et al. Receivers of Phila. & Reading R. R. Co. MANDATE.

22 UNITED STATES OF AMERICA *ss:*

I, William H. Merrick, Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing pages from one to twenty-three inclusive to contain a full, true, complete and faithful copy of the original Transcript of Record in the case of The United States of America, Plaintiff in Error vs. Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company, Defendants in Error, on file and now remaining among the records of said court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and ninety-eight and of the Independence of the United States the one hundred and twenty-third.

[SEAL]

W. H. MERRICK.
Clerk U. S. Circuit Court of Appeals,
Third Circuit.

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, greeting:

Being informed that there is now pending before you a suit in which the United States is plaintiff in error, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers of the Philadelphia & Reading Railroad Company, are defendants in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the district court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the

19 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twentieth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

20 (Indorsement:) Supreme Court of the United States. No. 630, October term, 1898. The United States vs. Joseph S. Harris et al., receivers, &c. Writ of certiorari.

21 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES
v.
JOSEPH S. HARRIS ET AL., RECEIVERS, ETC. } No. 630.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record of said cause in the circuit court of appeals for the third circuit, now on file in the office of the clerk of the Supreme Court of the United States, may be taken as the return of the clerk of the circuit court of appeals to the writ of certiorari issued herein.

J. K. RICHARDS,
Solicitor-General.
JOHN G. LAMB,
Counsel for Respondent.

22 UNITED STATES OF AMERICA, *set.:*

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, by virtue of the foregoing writ of certiorari

and in obedience thereto do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties thereto annexed as my return to the said writ.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-ninth day of December in the year of our Lord one thousand eight hundred and ninety-eight and of the independence of the United States the one hundred and twenty-third.

[SEAL.]

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

23 (Indorsement:) Supreme Court of United States. No. 630. October term, 1897. The United States, plaintiff in error, vs. Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers of the Philadelphia and Reading Railroad Co. Writ of certiorari with stipulation of counsel and return of clerk.

24 (Indorsement:) File No. 17215. Supreme Court U. S. October term, 1898. Term No. 630. The United States, petitioner, vs. Joseph S. Harris et al. Writ of certiorari and return. Filed Dec. 31, 1898.

No. 630. 169.

Br. of Atty. Gen. (Richards) for Pet'r

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Clerk.

Filed Dec. 10, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
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No. ~~630~~ 169

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, receivers of the Philadelphia and Reading Railroad Company.

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> The persons designated in section 4388 and made liable to the penalty are "any company, owner, or

> custodian of such animals." The district court held that this language does not embrace receivers, who are simply the court's officers appointed to execute its orders; that the Philadelphia and Reading Railroad was in the custody of the court and was controlled and managed by it through these officers; and that the statute being penal, it was not to be extended by construction so as to take in receivers. We can not doubt the soundness of these views, and, accordingly, we affirm the judgment of the district court.

It is respectfully submitted that, for the following reasons, this construction of the aforesaid sections was erroneous; that receivers of railroad companies may become officially liable to the penalty provided for in section 4388, the properties in their hands being properties of railroad companies which they, as officers of the court, must manage in conformity with the law.

(I) From the wording of the sections it is clear that Congress intended to enact a law applicable to all railroad companies alike, whether solvent or insolvent, whether in the hands of their officers or in the hands of receivers appointed by the court. There is no narrowing inference to be drawn from the language used. The terms "railroad company" or "companies" recur several times throughout the sections, and no qualifying words are anywhere added from which the conclusion might be drawn that the law was to apply only to companies whose properties were still in the hands of their officers and directors.

(II) Such being the clear intendment of the law, it is only by giving an undue effect to the rule of strict construction applicable to penal and semipenal statutes

that the scope of the statute can be so narrowed as to exclude corporations whose properties are being managed by receivers. The cases in which the rule as to penal statutes has been enforced do not, it is submitted, justify this narrow construction of the act.

(III) If it be argued that Congress did not actually have in mind corporations whose properties had passed into the hands of receivers as well as those whose properties were still in the hands of their officers and directors, the principles of the law of railroad receiverships would nevertheless require that receivers of railroad companies should obey the sections, inasmuch as Congress has referred to "railroad companies" without distinction. In assuming the rights of the common carrier, the receivers in the present case became officially subject—or, more strictly speaking, the *property in their hands* became subject—to the public and private liabilities of the carrier, both at common law and statutory. This being so, it would seem that the law of receiverships invites, rather than repels, what the Government conceives to be the true construction of the act.

(IV) The contrary construction, besides being entirely unwarranted by the wording of the sections, will establish a most unfortunate precedent. It will place, as it were, a premium on insolvency by allowing insolvent railroad companies to "cut" rates in cases of the transportation of live stock where other competing companies that have remained solvent are obliged to maintain a higher rate for the same transportation, to say nothing of the suffering of the animals transported, and the evil to the communities where they are delivered. Furthermore, the

decision in this case, if allowed to stand, will necessarily be regarded as a judicial authorization to receivers generally to disregard any police regulations which may be established by Congress for the management of railroad companies, whenever and wherever such regulations speak solely of "railroad companies" and fail to mention receivers *eo nomine*.

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The Solicitor-General therefore respectfully prays the court to issue a writ of certiorari to the United States circuit court of appeals for the third circuit, requiring the said court to certify the record and proceedings in the case to this court, for its review and determination in accordance with the provisions of section 6 of the act of Congress approved March 3, 1891, the petitioner believing that manifest error has arisen, and that the United States will be greatly prejudiced in its rights unless said writ of certiorari is allowed.

JOHN K. RICHARDS,
Solicitor-General.

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